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14 Tatung's request for a deposition of Rebecca Rudich, an
15 attorney with the law firm of McKenna, Long & Aldridge.

16 May I proceed?

17 SPECIAL MASTER POPPITI: Sure.

18 MS. BRZEZYNSKI: Your Honor, LPL moves for a
19 protective order because Rebecca Rudich's proposed
20 deposition has grown from a very well limited one issue
21 deposition where Tatung initially said it was willing to
22 accept a declaration to what has essentially become a
23 fishing expedition for inequitable conduct in areas
24 where Ms. Rudich does not have any relevant information

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1 at all.

2 A brief review of the history, I think, is
3 necessary here. Tatung initially noticed Miss Rudich's
4 deposition on March 1st of this year relating solely to
5 its unfounded allegations that McKenna, Long & Aldridge
6 violated the protective order in this case. As Your
7 Honor is aware, MLA, my firm, spent considerable time
8 and expense responding to those unfounded allegations
9 and providing privileged documents for in camera review.

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10 That resulted in a ruling by Your Honor that MLA had not
11 violated the protective order.

12 During that process, MLA clearly opposed the
13 taking of Miss Rudich's deposition and Tatung withdraw
14 its subpoena of Miss Rudich. That was clearly stated by
15 Mr. Merideth on the record and then confirmed by him in
16 his March 16th letter, which is Exhibit D to Tatung's
17 submission attached to his 8/1 letter.

18 In that March 16th letter, however, Tatung
19 did state, in the second paragraph, that it still needed
20 testimony from Rebecca Rudich on, quote, one very
21 limited issue, end quote. The letter went on to say
22 that, quote, The testimony will be limited to her
23 responses to a specific PTO Office action regarding the
24 '079 patent related to an IBM product, end quote.

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1 The letter also stated that Tatung was
2 willing to accept the declaration in lieu of a
3 deposition. Tatung offered to provide a draft
4 declaration of what it wanted and we received that draft
5 declaration on March 29th. That draft declaration sent

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6 by Mr. Merideth is both Exhibit F to Tatung's submission
7 and Exhibit 1 to LPL's August 1st submission.

8 SPECIAL MASTER POPPITI: I have reviewed
9 that.

10 MS. BRZEZYNSKI: Then, as you can see, Your
11 Honor, that draft declaration was solely limited to
12 Ms. Rudich's response to its 2006 Office action in the
13 '079 application and an identification of what
14 Ms. Rudich meant as "rear tray" in an IBM 9516 product,
15 and that's it.

16 That declaration did not include any
17 reference to what Ms. Rudich meant by spot mounting. In
18 fact, there was nothing further in that draft
19 declaration about any other aspect of the '079 patent
20 prosecution.

21 There also was never any suggestion, in that
22 declaration or otherwise, that Miss Rudich would be
23 asked about the prosecution of the patents-in-suit.
24 There was also no suggestion or reference in that draft

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2 about any potential prior art other than the IBM 9516
3 product.

4 All along, for months, a declaration was
5 only ever limited to the identification of the term
6 "rear tray" relating to the Office action response and
7 '079 continuation application.

8 Even when you look at the two declarations
9 submitted by LPL, which are Exhibits 4 and 6 to LPL's
10 August 1st submission, you reach the same conclusion.

11 I will add here that LPL does take serious
12 issue with the statement made by Tatung in its August
13 1st letter that it was, quote, strung along by LPL who,
14 apparently, had never intention of ever agreeing to a
15 meaningful declaration or deposition, end quote.

16 That statement cannot be anymore false and
17 it's frankly unacceptable that that sentence was
18 included in Tatung's submission given the history of LPL
19 working very quickly to submit revised declarations to
20 Tatung for its review.

21 First, LPL sent a draft declaration on April
22 23rd, after first sending comments to Tatung, which
23 Tatung then responded one day later and said that it was
24 concerned -- excuse me, three days later, on April 26th,

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1 that it was concerned that LPL's initial draft contained
2 subjective observations and commentary by Ms. Rudich.
3 We then removed all subjective observations and
4 commentary at Tatung's request and sent a revised draft
5 just one day later, on April 27th.

6 Again, that declaration, like all prior
7 declarations, focused solely on the Office action
8 response and an identification of what Ms. Rudich meant
9 by "rear tray," and that's it.

10 Now, months later, after the close of
11 discovery, Tatung has increased the scope of the
12 requested deposition even though they withdrew their
13 deposition subpoena. Their 8/1 submission requesting a
14 much broader deposition is not only untimely but,
15 frankly, it is easily dispensed with.

16 As you look at the 8/1 submission, and, Your
17 Honor, for the first time, Tatung seeks testimony from
18 Miss Rudich relating to the prosecution history for the
19 patents-in-suit.

20 Tatung has a fundamental misunderstanding.

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21 Rebecca Rudich did not prosecute the patents-in-suit.
22 Tatung must have known this since at least 2005, the
23 patent prosecution history documents, those are public
24 records. Their initial disclosures filed on July 29th,

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1 2005, identified Sung Jung and three other attorneys or
2 patent agents formerly with McKenna, or its predecessor
3 firm, in addition to Rebecca Rudich as prosecuting
4 attorneys.

5 SPECIAL MASTER POPPITI: Did she not
6 supervise?

7 MS. BRZEZYNSKI: No, not this. This is what
8 she did, and I will tell you exactly what she did. She
9 was not the supervisor for the patents-in-suit, Your
10 Honor. It was Sung Jung and Tatung must have known
11 this.

12 If they wanted, at any time, to depose the
13 prosecuting attorney for these patents-in-suit, it
14 should have noticed the deposition of one of the
15 prosecuting attorneys and it never did so.

16 We have never represented that Rebecca

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17 Rudich prosecuted the patents-in-suit. What she did,
18 and we went back to verify that we were actually
19 correct, she only signed three documents in each of the
20 patents-in-suit, and I will tell you exactly what they
21 were. One was a change of address form that was
22 submitted in each patent case after our merger, so that
23 was submitted and signed by her as she did for many,
24 many cases.

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1 The second was a non-substantive notice of
2 appeal filed in each of the two patent cases,
3 patents-in-suit. There, she signed them for Sung Jung
4 because the deadline was nearing and Sung, who had
5 directed its preparation of that notice of appeal, was
6 unavailable. She did not prepare it. She did not
7 direct its preparation.

8 The third is she signed -- she signed only
9 one substantive document in each case, and that was a
10 primary amendment signed in March 2002. It was actually
11 attached by Tatung to its submission.

12 As you can see, she signed that over Sung

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13 Jung's signature block because he was not available.
14 That document was either prepared by Mr. Jung or for him
15 at his direction. Rebecca Rudich was not involved in
16 the preparation of that document at all.
17 Then we have, Your Honor, Tatung's letter of
18 8/3. It's a second submission. I submit to you, Your
19 Honor, that Your Honor should disregard that submission
20 as untimely. The deadline is clearly 8/1, two days
21 earlier. Although Tatung states in that letter that it
22 obtained an LPL module on or about August 2nd, 2007, I
23 frankly find that terminology curious "on or about,"
24 either they received that product one day earlier or

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1 they didn't.
2 Regardless of that fact, Your Honor, LPL
3 simply disputes the allegation in that 8/3 submission
4 and disagrees that, regarding the relevance of the LPL
5 product. Regardless, Rebecca Rudich's deposition
6 relating to that LPL product is entirely not relevant or
7 necessary. Rebecca Rudich did not prosecute the
8 patents-in-suit and she never knew about that LPL

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9 LC056N1 module listed in the letter.

10 We are agreeable to offering a simple
11 declaration that says that she never knew about that
12 module if that will suffice.

13 Accordingly, Tatung's request, in its August
14 3rd letter to depose Rebecca Rudich regarding, quote,
15 her knowledge of LG products that practiced the claimed
16 invention, any investigation she performed and her
17 general custom and practice when prosecuting patents,
18 among other things, end quote, should be denied. She
19 can't answer those questions if she did not prosecute
20 the patents-in-suit.

21 Tatung never noticed the depositions of any
22 of the prosecution attorneys and it cannot legitimately
23 claim that it ever intended to ask Rebecca Rudich about
24 these issues.

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1 SPECIAL MASTER POPPITI: Let me just ask you
2 a question about process for a moment because I don't
3 have, in mind, all of the documents that you just
4 referred to in terms of what Rebecca Rudich did or

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5 didn't do with the Patent Office. If they are in front
6 of me in these applications, point me to them.

7 MS. BRZEZYNSKI: Sure, Your Honor. I will
8 point you to the only substantive document that Rebecca
9 ever signed relating to the prosecution of the
10 patents-in-suit are attached as Exhibits B and C to
11 Tatung's submission.

12 SPECIAL MASTER POPPITI: Let me just pause
13 and look at those for a moment.

14 MS. BRZEZYNSKI: Sure.

15 SPECIAL MASTER POPPITI: The submission of
16 August 3rd, 2007 --

17 MS. BRZEZYNSKI: Not the August 3rd, Your
18 Honor. The August 1 submission.

19 SPECIAL MASTER POPPITI: It's the August 1
20 submission. I had the August 3rd on top of it.

21 You would agree with me that, to the extent
22 that she signed that document, she was prosecuting, at
23 least, part, the application?

24 MS. BRZEZYNSKI: Your Honor, I can only

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1 represent to you what I have been told, that she did not
2 prosecute this application. She merely signed it on
3 Sung's behalf because he was not available to sign that
4 day when it was finalized.

5 She did not in any way prepare that
6 amendment. She did not direct its preparation. She did
7 not comment on its preparation. She simply signed it
8 for Sung because he was absent.

9 SPECIAL MASTER POPPITI: But, counsel --

10 MS. BRZEZYNSKI: That's all I can tell you.

11 She cannot offer any testimony relating to that
12 amendment, why it was drafted, why it was prepared at
13 all.

14 SPECIAL MASTER POPPITI: Well, she may have
15 -- she may be in a position to say that, and perhaps it
16 would be better for me to be even better informed about
17 what a patent prosecutor does. But I just have to
18 expect that when you sign a document, through the United
19 States Patent Office, is it any different from, if you
20 will, local counsel signing a document that may be
21 prepared by another office? Everyone certainly
22 understands, at this Bar, that local counsel, when doing
23 that, certifies that everything in there is correct and

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24 accurate, in substance, certifies that it's been read

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1 and understood, and, if necessary, would be called upon
2 to answer questions about it if lead is not able to, or
3 even if lead is there. The Court has the right to look
4 to local counsel -- and, please, my friends at the Bar,
5 tell me if you think this is inaccurate -- and say, What
6 do you mean by that?

7 MS. BRZEZYNSKI: I understand your point,
8 Your Honor. I can only add, based on what I understand,
9 is that it was represented to her that this was complete
10 and needed to be filed that day, Mr. Jung was not
11 available, and she signed on his behalf. That's all I
12 can say.

13 Stepping back from that, Your Honor, Tatung
14 has known all along that the attorneys primarily
15 prosecuting this patent -- these patents-in-suit, it's
16 not Rebecca Rudich. They can see from the patent
17 prosecution history that it's Mr. Jung's name, as well
18 as the name of one of our former associates, Ken
19 Springer, that primarily prosecuted these

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20 patents-in-suit and not Rebecca Rudich.

21 This is an after the fact untimely attempt

22 by Tatung to unfairly broaden the scope of a deposition

23 request that they withdrew months and months earlier.

24 If Tatung, at some point, wanted to depose

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1 the prosecuting attorney, they could have informed us,

2 they could have noticed that deposition, and requested

3 and took the deposition of the prosecuting attorney. I

4 mean, they identified Sung Jung, as well as all the

5 other attorneys that signed documents in their initial

6 disclosures. They were aware of Sung Jung, Kenneth

7 Springer, and the other attorneys.

8 SPECIAL MASTER POPPITI: Let me ask this

9 question, and I don't want to dwell on this, but

10 somebody remind me, if you will, when I was dealing with

11 an issue involving Rebecca Rudich, as was described

12 earlier, am I correct in recalling that, as part of a

13 declaration that she signed, that she described, in some

14 words, that she supervised prosecution work?

15 MS. BRZEZYNSKI: She does generally

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16 supervise prosecution work, Your Honor, but not for the
17 patents-in-suit. We prosecute a very large number of
18 patents --

19 SPECIAL MASTER POPPIT: Sure.

20 MS. BRZEZYNSKI: -- at this firm. She has
21 been involved in the continuation application, '079
22 continuation application. She was not involved in the
23 prosecution of the patents-in-suit, however.

24 SPECIAL MASTER POPPIT: Let's focus on the

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1 fact, then, that she was -- she did prosecute a
2 continuation patent, and maybe I should be hearing from
3 Tatung's point of view what responsibility Rebecca
4 Rudich has when she is prosecuting a continuation patent
5 with respect to its parent because I don't know that
6 that's been developed in the papers; is that an
7 appropriate question?

8 MS. BRZEZYNSKI: You are correct, Your
9 Honor, that has not been developed in the papers at all.
10 That also has not been requested by Tatung until its 8/1
11 submission. Prior to that date, they only ever

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12 requested information with regard to one Office action
13 response and her identification of the words "rear
14 tray." That's it.

15 SPECIAL MASTER POPPITI: Let's take that
16 piece and let me hear from Tatung.

17 MR. MERIDETH: Yes, Your Honor. It is
18 correct that, initially, we indicated that the
19 deposition of Ms. Rudich would be taken with respect to
20 the IBM reference that she made with respect to the '079
21 application because, at that time, that was the only
22 item of prior art that we were aware of.

23 Since that time, two items of prior art have
24 surfaced, which is the 500 LC, and, most recently, the

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1 module that is attached to the August 3rd letter, the
2 LC056N1.

3 SPECIAL MASTER POPPITI: Right.

4 MR. MERIDETH: And it is our view that,
5 particularly the latter document, which was only
6 produced a couple of weeks ago, are ripe for
7 examination. We happen to believe that Ms. Rudich has

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8 supervised the filing of patents; she has been involved
9 in at least two substantive filings with respect to the
10 patents-in-suit; she should know what the policies are
11 with respect to investigation of prior art.

12 If she is unaware of any investigation that
13 was done, if she is unaware of any policy with respect
14 to investigation, and if she doesn't know anything about
15 either the 500 LC or about the August 3 identified
16 module, then she can say so. But I believe that we are
17 entitled to take her deposition because I believe that
18 that, in addition to the issue of the IBM module, is
19 crucial testimony with respect to both the infringement
20 issues and with respect to the issue of inequitable
21 conduct.

22 SPECIAL MASTER POPPIT: Let me --

23 MR. MERIDETH: I want to add one other
24 thing, that is, within the past two weeks, Miss Rudich

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1 has filed a further disclosure with respect to the '079
2 application in which she has listed other prior art that
3 we have identified in our interrogatory responses,

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4 including the Sharp modules, which are in -- I think
5 within the past month, excuse me, which are very, very
6 similar in design to the "N module," if we want to call
7 it that, and it, except that the August 3rd pictures, as
8 you see, indicate that there is a stand off in the back,
9 the first frame of that module.

10 So, we believe that the fact that she has
11 filed this further disclosure is, again, another area
12 that we would want to inquire and to find out, for
13 example, why she disclosed the Sharp modules but did not
14 disclose this particular module.

15 SPECIAL MASTER POPPITI: Let me ask a
16 question because I, quite frankly, got a wee bit
17 distracted when I was reading the response to the Patent
18 Office action in light of the history of the
19 declarations that has been described for me. And maybe
20 this means nothing, and if it does, somebody tell me
21 that it doesn't mean anything, but one of the issues
22 that I think Tatung has raised is the question as it
23 relates to impeachment, if you will, of LPL's position.

24 Let me ask this question: You find the

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1 initial declaration was found to be unacceptable by LPL
2 was based on, as I understand it, the assertion that
3 Miss Rudich did not have the benefit of a device to
4 examine and was not using photographs for purposes of
5 responding to the Patent Office action; am I correct so
6 far?

7 MR. MERIDETH: I don't believe so, Your
8 Honor. I believe she did have photographs, and one of
9 the reasons that there was a hiatus in the exchanges of
10 the declarations was because we were provided with
11 copies of those photographs which were merely a
12 photocopy of photographs and they were black and white
13 and you couldn't make out the photograph, and
14 Mr. Ambrozy indicated that he would obtain better
15 copies, which he ultimately did, about a week before my
16 final letter to him, and, so, she did examine
17 photographs.

18 SPECIAL MASTER POPPITI: I may have been
19 mistaken. But with respect to the device, not having
20 the opportunity to look at the device, that was part of
21 the concern; is that fair?

22 MS. BRZEZYNSKI: That's absolutely correct,

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23 Your Honor. Our two concerns were Rebecca Rudich did
24 not look at any actual device when preparing the Office

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1 action response, and the other concern was along the
2 lines that you said, she did not view the photographs
3 that Mr. Merideth had submitted with his draft
4 declaration, which were different photographs, different
5 labels --

6 SPECIAL MASTER POPPITI: Then I was, at
7 least I remembered something about the photographs by
8 virtue of asking the question.

9 MS. BRZEZYNSKI: Yes.

10 SPECIAL MASTER POPPITI: Let me tell you
11 what troubled me: I expect you all have her remarks in
12 front of you; if not, would you please put them in front
13 of you.

14 MS. BRZEZYNSKI: By "remarks," which draft
15 declaration, Your Honor?

16 SPECIAL MASTER POPPITI: I am looking
17 behind this one submission at Exhibit E and I am looking
18 at page 6 of the United States Patent --

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19 MS. BRZEZYNSKI: Your Honor, you cut off.
20 Which exhibit, please?
21 SPECIAL MASTER POPPITI: Start you at page 6
22 of that exhibit.
23 MS. BRZEZYNSKI: Which exhibit again?
24 SPECIAL MASTER POPPITI: "E" as in Edward.

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1 MS. BRZEZYNSKI: "E" as in Edward. Thank
2 you. Page 6?
3 SPECIAL MASTER POPPITI: Are you both there?
4 MS. BRZEZYNSKI: Yes, I am, Your Honor.
5 SPECIAL MASTER POPPITI: Mr. Merideth?
6 MR. MERIDETH: Yes, Your Honor.
7 SPECIAL MASTER POPPITI: Bottom of page 6,
8 and I will just start, for purposes of context, with the
9 sentence that begins, "So nothing in the IBM 9516
10 teaches or suggests the first frame being fixed to the
11 rear part of the housing. Applicants refer the examiner
12 to the cited figure on page 9 of the IBM 9516 reference.
13 At best, the figure shows the screws, two, go through
14 the back cover from the back to the front. There is no

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15 teaching or suggestion that there is any fixing at the
16 first frame."

17 The next sentence reads, "And, in fact, in
18 the physical device, the fixings occur at the front
19 housing of the IBM 9516."

20 If you will also look at page 7 of
21 Miss Rudich's remarks, second full paragraph, the last
22 four sentences of that paragraph virtually mirror what I
23 just read to you. I can tell you that when I read that,
24 in the context of the -- of looking at the

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1 representation that she did not have a device from which
2 to make these remarks, and I read twice, and, in fact,
3 in the physical device, there is no such fixing of the
4 rear frame to the rear portion of the housing of the IBM
5 9516, I had to sit up and read it several different
6 times.

7 MS. BRZEZYNSKI: Your Honor, I understand.
8 I asked Ms. Rudich that question and she says that she
9 did not have the device, she has not seen the device,
10 she was relying solely on the reference documents, the

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11 IBM 9516 reference document, and also the pictures that
12 she had of the device, the pictures of the physical
13 device that she saw at the time.

14 SPECIAL MASTER POPPITI: Mr. Merideth.

15 MR. MERIDETH: I think she had the device,
16 Your Honor, as I put in the original declaration.

17 MS. BRZEZYNSKI: Oh, come on. We have
18 represented that she doesn't have the device. She is
19 willing to sign a declaration to that effect.

20 SPECIAL MASTER POPPITI: Counsel, "Oh, come
21 on" is not part of an argument that gets made in
22 Delaware.

23 MS. BRZEZYNSKI: I apologize, Your Honor.

24 SPECIAL MASTER POPPITI: Thank you.

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1 MR. MERIDETH: I think that is an issue,
2 Your Honor, which needs to be addressed.

3 SPECIAL MASTER POPPITI: Mr. Merideth, just
4 a second. It's one that I raised; Mr. Merideth didn't.
5 It's one that I told you I paused over and read several
6 times. If she didn't have the device, but whether she

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7 did have the device, there is a sentence in there that,
8 at least if you say that she didn't, is unclear to me,
9 and if it is unclear and there is an issue with respect
10 to the candor of the Patent Office, and we will talk
11 about that in a moment, or if there is an issue with
12 respect to impeachment of LPL's position as it relates
13 to infringement or patentability, she was involved in
14 the patent prosecution of this continuation patent, was
15 she not?

16 MS. BRZEZYNSKI: She certainly was, Your
17 Honor.

18 SPECIAL MASTER POPPITI: And that statement
19 in that document is either crystal clear, and if it's
20 crystal clear, it says to me that she is looking at a
21 device, and if it's not, she should be able to explain
22 it, shouldn't she?

23 MS. BRZEZYNSKI: And she has attempted to do
24 so through her declarations that she's submitted.

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1 SPECIAL MASTER POPPITI: Then why is the
2 declaration -- I understand the whole process of wanting

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3 to streamline this whole effort, but if, ultimately, a
4 declaration is not acceptable and if it's not acceptable
5 because there are issues that need to be explored, why
6 is that a problem?

7 MS. BRZEZYNSKI: Your Honor, Tatung has
8 never indicated that it was concerned with that
9 sentence. In fact, when Miss Rudich, in her first draft
10 declaration, included, you know, discussion as to why
11 she used certain terms, they wanted those references
12 removed from her declaration. They didn't want her --

13 SPECIAL MASTER POPPITI: I understand that.
14 I understand why you wouldn't want that kind of
15 information in the declaration. You can't cross-examine
16 it.

17 MS. BRZEZYNSKI: I understand. So we have
18 removed that. They have never raised this issue. We
19 are willing to provide a declaration in response to any
20 questions they have relating to this Office action.

21 They only ever raised the term "rear tray,"
22 Your Honor. They never raised anything else at all.

23 Now, Mr. Merideth --

24 SPECIAL MASTER POPPITI: That's an

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1 appropriate reflection of the history, is it not?

2 MR. MERIDETH: Your Honor, the initial draft
3 declaration that I prepared talked about her examination
4 of the physical device because I believed, based upon
5 the Office action response, that she had, in fact,
6 examined the physical device.

7 One of the things that she said in response
8 to that initial declaration, or Miss Brzezynski said,
9 was that she didn't have a physical device in her
10 presence. I find that hard to believe. I think it is
11 at least irresponsible to make the types of
12 representations that she made. If she didn't have the
13 physical device in her possession, it certainly suggests
14 that she had the physical device in her presence.

15 One of the reasons why we believe that the
16 declaration is not sufficient is because we will not
17 have an opportunity, or we would not have an opportunity
18 to cross-examine her with respect to the various
19 statements that she's made. And I don't know what she
20 is going to say, but I believe that my client has a
21 right to cross-examine her about what she did say and

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22 about what she knew at the time and what her purpose was
23 in describing the physical device and the two references
24 that you made that certainly brought me to that

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1 conclusion which is reflected in the original
2 declaration that I prepared. And if she didn't look at
3 a physical device, she certainly still described
4 something that we could use to impeach the testimony.

5 SPECIAL MASTER POPPITI: You just faded out,
6 Mr. Merideth. I lost your last phrase.

7 MR. MERIDETH: She says that the IBM
8 reference is a front mounted device.

9 SPECIAL MASTER POPPITI: Yes, she does.

10 MR. MERIDETH: And in her responsive
11 declaration, she tries to back off that position by
12 saying what she really meant was that the tray was the
13 first frame and blah, blah, blah, blah. Well, that
14 isn't what she said. And I believe that I have a right
15 to cross-examine her as to what she did say.

16 To the extent that she is going to be called
17 upon as a witness in the trial and is going to testify

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18 that she meant something other than what she said, or
19 the argument is going to be made that what she said is
20 ambiguous, I have a right, or I should have a right to
21 cross-examine her as to what exactly she said and what
22 she meant at the time because I think it's very
23 important.

24 Now, we are going to have Mr. Bohannon

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1 saying that the method that Tatung uses to mount its
2 modules infringes the patent because it's rear mounted
3 and the method that is used is virtually identical to
4 the method that she describes, that is, the screws go
5 from the back of the case through the LCD bracket, which
6 is what she calls a "tray," through the first frame, and
7 into the front case or front housing. And she says
8 that's front mounting and Mr. Bohannon says that's rear
9 mounting. It seems to me that we are entitled to get
10 her testimony on that subject.

11 She was LPL's representative making a
12 representation under the circumstances of a patent
13 prosecutor to a PTO.

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14 MS. BRZEZYNSKI: Your Honor, may I respond?

15 SPECIAL MASTER POPPITI: Sure.

16 MS. BRZEZYNSKI: First, just so the record

17 is clear, we advised Mr. Merideth on April 3rd that

18 Miss Rudich never viewed a device. On that same day,

19 Mr. Merideth responded by e-mail, and that e-mail is

20 attached as Exhibit 3 to LPL's submission, he

21 acknowledges in that letter that he had assumed that

22 Rudich had an IBM 9516. If she did not, then that needs

23 to be changed. If she relied on photos, then we should

24 attach the photos. We can -- I am sorry.

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1 SPECIAL MASTER POPPITI: I am reading that.

2 I see that.

3 MS. BRZEZYNSKI: And I point that out just

4 to let you know that we informed Tatung very early that

5 she did not review a device. Mr. Merideth did not

6 question that, and we, thereafter, submitted our revised

7 declaration.

8 Now, so, I don't believe there was any issue

9 ever raised by Mr. Merideth questioning whether or not

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10 Ms. Rudich had ever seen a device until today.

11 Now, putting that aside, Your Honor,

12 Miss Rudich's statements to the PTO, in connection with

13 a continuation application, are simply not relevant here

14 for infringement for several reasons: One, because

15 Tatung's accused products also meet the claim

16 limitations of the patents-in-suit, it doesn't matter

17 whether the Tatung's method of mounting for its accused

18 products also are in common with the IBM product.

19 Second, if Tatung is attempting to assert

20 that Miss Rudich's statements are somehow relevant for

21 claim construction, that's already been decided by Your

22 Honor, is now on appeal, and that would be extrinsic

23 evidence.

24 Third, the claims in the '079 application

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1 are different from those in the patents-in-suit and the

2 claim referenced in the Office action response in the

3 '079 application is specifically not in the

4 patents-in-suit.

5 So I would submit to you, Your Honor, that

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6 Miss Rudich's testimony relating to her statements to
7 the PTO in an Office action response in connection with
8 a continuation application are simply not relevant here,
9 or, in this case, not necessary.

10 I am also going to point out, Your Honor,
11 that the inventors of the patents-in-suit were deposed
12 for 11 days.

13 SPECIAL MASTER POPPITI: I am aware of that.

14 MS. BRZEZYNSKI: And they were asked about a
15 500 LC product referenced by Mr. Merideth earlier. They
16 were asked, at length, about front mounting. They were
17 also asked, at length, about whether there were any LPL
18 or LGE products that had any fastening elements on the
19 back side of the flat panel display device which
20 predated the invention of rear mounting. They also were
21 asked whether any such flat panel display device was
22 submitted to the PTO.

23 The defendants have clearly asked the
24 inventors this at extreme length. There is no need to

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2 issues especially when she did not prosecute the
3 patents-in-suit.

4 MR. MERIDETH: Your Honor, I think that Miss
5 Brzezynski has really put her finger on the central
6 point here. We did examine the inventors at great
7 length and we did ask the inventors, not only Mr. Kim in
8 his capacity as an inventor but Mr. Kim in his capacity
9 as a 30(b)(6) witness for LPL, whether there were any LG
10 products which practiced rear mounting, and those topics
11 were topics eight and 32 in the notice of deposition for
12 the 30(b)(6) deposition, and he testified unqualifiedly
13 that there were no such products.

14 If you look at our August 3 submission,
15 which shows a Gold Star product, "Gold Star" being one
16 of the names used by LG Electronics, the "LG" standing
17 for Lucky Gold Star, it's clear that Mr. Kim either was
18 not telling the truth or was misinformed in his capacity
19 as a 30(b)(6) witness because you can clearly see that
20 there are only rear mounting features and there are no
21 front mounting features.

22 So, we now need to determine whether Mr. Kim
23 was telling the truth, what the prosecutors of the
24 patent knew about the prior art, and she's put her

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1 finger right on the subject. If no inquiry was made and
2 nobody knew anything about it, we need to know that.

3 If they did know something about it, we are
4 entitled to know that as well. And it is true that we
5 raised these very questions with Mr. Kim, and, indeed,
6 showed Mr. Kim the Sharp module that it appears that
7 this device, the LC056N1 copies, and he said he had
8 never seen anything like that before; he doesn't know
9 anything about it.

10 So, but here we have a product in 1996 that
11 has rear mounting and practices rear mounting.

12 MS. BRZEZYNSKI: Your Honor, obviously, we
13 dispute Tatung's characterization of the product
14 attached to its August 3rd submission.

15 Regardless of that, Your Honor, Miss Rudich
16 has never seen that module. If she -- she is not in a
17 position to offer any testimony whatsoever about that
18 product at all. It's clear Tatung has conceded they
19 have exhausted their questioning on that issue. They
20 asked the inventor. The inventor said he didn't see it;

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21 he had never seen a product like that.

22 MR. MERIDETH: The 30(b)(6) witness who had

23 -- who was noticed to testify specifically on the issue

24 of any prior art, including LGE products, and he said

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1 that he was unaware of any LGE product like not only the

2 practiced rear mounting like this one or that was like

3 the Sharp module that he was shown, which is precisely

4 what this is.

5 SPECIAL MASTER POPPITI: There are two

6 things.

7 MR. MERIDETH: If she didn't know about it,

8 we need to know why she didn't know about it.

9 SPECIAL MASTER POPPITI: There are a couple

10 things here. One thing that I do want is some brief

11 additional development. I do not accept the proposition

12 that Miss Rudich did not prosecute the patents-in-suit.

13 I understand that she may not have been considered first

14 chair, but she signed documents that suggest to me that

15 she was prosecuting the patents-in-suit. She was

16 prosecuting a continuation patent. And what I would

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17 like for you to develop for me, very briefly, just point
18 me in the direction of any case law, if you have it, to
19 what is the impact if there is any inequitable conduct
20 with respect to the continuation patent on the
21 patent-in-suit.

22 Are you with me?

23 MS. BRZEZYNSKI: Yes, Your Honor.

24 SPECIAL MASTER POPPIT: And I'd like you to

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1 do that for me as quickly as possible so that I can, we
2 have a date when we are going to reconvene, so that I
3 can have that before that date. I don't need argument.
4 I just need -- Mr. Merideth, it's your position, if you
5 will, that it relates to inequitable conduct, and I'd
6 like to see the development of that by just point me in
7 the direction of case law. If you need to comment on
8 it, no more than two pages.

9 MR. MERIDETH: I will be happy to do that,
10 Your Honor.

11 There is one thing that I want to make
12 clear, however, and, that is, I believe Miss Rudich's

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13 testimony relates to two issues. One relates to the
14 prosecution of the patents-in-suit. The other is to the
15 prosecution of the continuation patent, but as -- the
16 continuation application.

17 SPECIAL MASTER POPPITI: Right.

18 MR. MERIDETH: But the statements that she
19 makes don't describe the claims of the continuation
20 patent. They describe a product and they describe the
21 method of mounting that product and the features of that
22 product. I don't think the claims have anything to do
23 with it. She describes the IBM product. That IBM
24 product, we have obtained physical samples of. It will

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1 be in front of her, it will be in front of you, and it
2 will be in front of a jury to determine whether or not
3 the methods that are used with respect to that IBM
4 product are the same as the ones -- are those the same
5 practice that Tatung uses with respect to mounting the
6 accused product. We believe that they are one in the
7 same and we believe that that is clearly relevant and
8 will be at the center of the issue with regard to

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9 non-infringement.

10 SPECIAL MASTER POPPITI: And I understand
11 that, and I understand the argument, I accept the
12 argument, but I still want the issue to be developed on
13 the issue of inequitable conduct.

14 MS. BRZEZYNSKI: I am happy to respond on
15 that issue but I'd like to say a couple things in
16 response to Mr. Merideth's statement.

17 First, if Mr. Merideth is intending to show
18 the device to Miss Rudich and then ask her to testify or
19 draw conclusions from that device in any way, I submit
20 to you that is wholly inappropriate. It's in the nature
21 of expert testimony. We have an agreement from Tatung
22 and ViewSonic in this case that our experts are the sole
23 witnesses as to invalidity and infringement contentions
24 and that there be no testimony taken from factual

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1 witnesses. The only testimony taken from factual
2 witnesses are simply what they knew existed before the
3 patents were filed but not why he or she contends that a
4 particular reference is or is not prior art.

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5 SPECIAL MASTER POPPITI: You know, I
6 hesitate to give advice and guidance, but I certainly
7 tend to agree with what you have just said. But we
8 don't -- that's a different step in the process here.

9 MS. BRZEZYNSKI: I agree. I just wanted to
10 point that out, Your Honor.

11 I also wanted to quickly respond to
12 Mr. Merideth's comments earlier that Miss Rudich
13 recently submitted, in the '079 application prosecution,
14 other prior art in an area that was recently identified
15 by Tatung in an interrogatory response, and I would
16 submit to you that that document was submitted to the
17 PTO because Tatung put it in issue in its interrogatory
18 answer and this firm has an obligation to put the PTO on
19 notice of asserted prior art.

20 LPL is not conceding that those products are
21 prior art, but we had an obligation to put the PTO on
22 notice. That's why that submission was made.

23 SPECIAL MASTER POPPITI: I understand.

24 MS. BRZEZYNSKI: Okay. I just wanted to

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1 make sure that that point was made on the record, Your

2 Honor.

3 SPECIAL MASTER POPPITI: Okay.

4 MS. BRZEZYNSKI: With respect to your

5 request for additional research, can we agree to

6 simultaneous requests submitted?

7 SPECIAL MASTER POPPITI: Yes.

8 MS. BRZEZYNSKI: By the end of the day

9 tomorrow?

10 SPECIAL MASTER POPPITI: Mr. Merideth?

11 MR. MERIDETH: I am sorry. I didn't hear

12 what was said.

13 SPECIAL MASTER POPPITI: Would you agree to

14 submit simultaneous --

15 MR. MERIDETH: Yes, that's acceptable.

16 SPECIAL MASTER POPPITI: End of day

17 tomorrow? Is that acceptable as well?

18 MR. MERIDETH: End of day California time

19 tomorrow?

20 SPECIAL MASTER POPPITI: Yes, California

21 time.

22 MR. MERIDETH: Okay. That's fine.

23 MS. BRZEZYNSKI: What time would that be,

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24 Your Honor? I just want to have a clear understanding.

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1 MR. MERIDETH: It would be 5:00 Pacific
2 time, 8:00 Eastern time.

3 MS. BRZEZYNSKI: That's fine.

4 MR. MERIDETH: That's what I have in mind
5 anyway.

6 SPECIAL MASTER POPPITI: That's fine. I
7 think that that does it for purposes of today, does it
8 not?

9 MR. CHRISTENSON: Your Honor, LPL had just a
10 couple quick things to raise.

11 First of all, we are in the process of
12 confirming that we are going to have all of the updated
13 2007 sales information from the defendants that we need
14 and we discussed that with them and we are confident
15 that that's going to be resolved, to the extent it's not
16 already resolved, but if it's not resolved, I would like
17 the opportunity to address that in our call on Monday
18 because that's information we need for our damages
19 expert.

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20 SPECIAL MASTER POPPITI: Okay.

21 MR. CHRISTENSON: And then the other issue
22 is something that Mr. Ambrozy wanted to address.

23 MR. AMBROZY: Your Honor, Rel Ambrozy. We
24 have been in contact with both Tatung and ViewSonic. In

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1 regard to Tatung, we have been seeking documents that
2 were at issue during the deposition of one of their
3 30(b)(6) witnesses, and we have asked for, for example,
4 assembly instructions and some information pertaining to
5 the actual modules used in the monitors that they sell.
6 We haven't been able to reach any agreement on that,
7 and, so, we'd like to bring a motion to compel these
8 documents and we can do it in a few-page letter on each
9 topic to Your Honor, we could have it to Your Honor by
10 the end of day tomorrow and hopefully to be heard on the
11 13th.

12 The second issue is we have approached both
13 ViewSonic and Tatung to allow us to re-inspect some of
14 the accused devices as well as the prior art devices,
15 and although our expert has seen these devices before,

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16 because of Your Honor's claim construction, in certain
17 instances, Your Honor's claim construction was neither
18 Tatung's nor ViewSonic's nor LPL's, and, therefore,
19 there was a nuance that was inserted because of your
20 claim construction that was not taken into consideration
21 when the instructions were done the first time, and, so,
22 that's why we would need another inspection of these
23 monitors. And we were rebuffed by the defendants and we
24 would like to brief that for Your Honor on the same

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1 schedule.

2 SPECIAL MASTER POPPITI: Well, by "same
3 schedule," you mean for the 13th?

4 MR. AMBROZY: Yes, Your Honor. We'd submit
5 our papers tomorrow, defendants could submit theirs by
6 Friday, and then, hopefully, we could have it heard on
7 Monday?

8 SPECIAL MASTER POPPITI: Any reaction to
9 that, please?

10 MS. ROMAN: Your Honor, I guess my only
11 concern would be, given the lateness of the start time

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12 of the hearing on the 13th and the multiple issues that
13 might need to be dealt with, that we might want to put
14 that issue on for a Tuesday call, but in terms of
15 briefing the issues, I understand the need to do so.

16 SPECIAL MASTER POPPITI: Well, then, let's
17 get the submittals accomplished as you described. I am
18 also concerned about whether or not I am going to be
19 able to deal with everything on Monday. I can start
20 earlier. I was just putting a late start expecting that
21 you would have the opportunity to continue to meet and
22 confer.

23 MS. BRZEZYNSKI: Your Honor, do you
24 anticipate further argument on the Rudich deposition

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1 issue, and, if so, may I request that that argument be
2 held on Friday morning, perhaps --

3 SPECIAL MASTER POPPITI: I can't do Friday.
4 I have got an all day hearing in another patent case.

5 MS. BRZEZYNSKI: Could you, perhaps, do
6 Thursday? I leave on vacation this weekend.

7 SPECIAL MASTER POPPITI: Well, what I am

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8 going to need is some opportunity to look at the case
9 law that you have submitted. I wasn't anticipating
10 doing that before the weekend, but if -- you leave
11 Saturday?

12 MS. BRZEZYNSKI: I leave Sunday, Your Honor.

13 SPECIAL MASTER POPPITI: I would prefer -- I
14 do anticipate final discussion, if you will, on the
15 Rudich deposition, and I would prefer to do it at the
16 end of the day on Friday.

17 MR. MERIDETH: Your Honor, I am sorry, but I
18 am not going to be available on Friday. I am going to
19 be in the air. I apologize.

20 MS. BRZEZYNSKI: I am sorry to make this
21 difficult.

22 SPECIAL MASTER POPPITI: It's not difficult.
23 It's a matter of -- then let's look at -- just one
24 moment. I am going to put you on mute for a moment. I

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1 just have to check schedule. Hold on.

2 How is your schedules for Thursday, the 9th,
3 at 5:00?

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4 MS. BRZEZYNSKI: I can do that time, Your
5 Honor.

6 MR. MERIDETH: That's acceptable for me,
7 Your Honor.

8 MS. BRZEZYNSKI: Thank you for accommodating
9 me, Your Honor.

10 SPECIAL MASTER POPPITI: Wait one moment,
11 please. That would be 5:00 my time, Eastern Standard
12 time.

13 MS. BRZEZYNSKI: Yes, Your Honor.

14 MR. MERIDETH: Yes, Your Honor.

15 SPECIAL MASTER POPPITI: That's good. Okay.
16 Are there any other matters, then, please?

17 MR. CHRISTENSON: Not from LPL, Your Honor.

18 MS. ROMAN: Nothing from ViewSonic, Your
19 Honor.

20 MR. MERIDETH: Nothing from Tatung.

21 SPECIAL MASTER POPPITI: Thank you all.

22 (The hearing was concluded at 5:35 p.m.)

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1 CERTIFICATE

2 STATE OF DELAWARE:

3 :
4 NEW CASTLE COUNTY:

5 I, Renee A. Meyers, a Registered Professional
6 Reporter, within and for the County and State aforesaid,
7 do hereby certify that the foregoing teleconference was
8 taken before me, pursuant to notice, at the time and
9 place indicated; that the teleconference was correctly
10 recorded in machine shorthand by me and thereafter
11 transcribed under my supervision with computer-aided
12 transcription; that the foregoing teleconference is a
13 true record; and that I am neither of counsel nor kin to
14 any party in said action, nor interested in the outcome
15 thereof.

16 WITNESS my hand this 8th day of August A.D. 2007.

17

18

19 _____
20 RENEE A. MEYERS
21 REGISTERED PROFESSIONAL REPORTER
22 CERTIFICATION NO. 106-RPR
(Expires January 31, 2008)

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